

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

FREEDOM FROM RELIGION
FOUNDATION, INC.; ANNE NICOL
GAYLOR; ANNIE LAURIE GAYLOR;
PAUL GAYLOR; DAN BARKER;
PHYLLIS ROSE, and JILL DEAN,

Plaintiffs,

v.

Case No: 08-CV-588

PRESIDENT BARACK OBAMA; WHITE HOUSE
PRESS SECRETARY ROBERT GIBBS; WISCONSIN
GOVERNOR JIM DOYLE; and SHIRLEY DOBSON,
CHAIRMAN OF THE NATIONAL
DAY OF PRAYER TASK FORCE,

Defendants.

PRELIMINARY PRETRIAL CONFERENCE REPORT

The parties jointly submit the following Preliminary Pretrial Conference Report:

1. Statement of the Case. The Plaintiffs allege that National Day of Prayer Proclamations violate the Establishment Clause of the First Amendment to the United States Constitution. The Defendants deny the Plaintiffs' allegations.
2. Names of Related Cases. A case involving Prayer Proclamations is pending in Colorado State Court, Case No: 08-CV-9799.
3. Statement of Factual and Legal Issues.
 - a. Whether plaintiffs have standing, including whether they have suffered a concrete and particularized injury.
 - b. Whether the Defendants are immune from suit.

- c. Whether the Complaint states claims upon which relief may be granted.
- d. Whether the Defendants' actions violate the Establishment Clause.

4. Description of Amendments to Pleadings. The parties reserve the right to amend pleadings as allowed by the Court's Scheduling Order.

5. Identity of Added New Parties. None anticipated at this time, but named federal officials need to be substituted, pursuant to Fed. R. Civ. P. 25(d), to reflect Barack Obama as President and Robert Gibbs as White House Press Secretary.

6. Estimated Trial Length. Two days (to the Court).

7. Other Matters Which May Affect Disposition of Case. This matter does not raise issues requiring a jury's determination, so trial to the Court is appropriate. The Defendants have pending motions to dismiss and contemplate summary judgment motions as may be appropriate.

8. Proposed Discovery Plan.

- a. The parties have agreed to hold formal discovery in abeyance until resolution of the pending motions to dismiss by the court. The parties have also otherwise agreed to waive mandatory Rule 26(a)(1) disclosures. The parties agree to follow the procedures set forth in Rules 26(b)(3) and (5) regarding privileged or trial preparation materials, and request that the Court order that the inadvertent production of a privileged document or trial preparation material shall not constitute the waiver of privilege or protection for that document or any other documents regarding the same subject matter. The defendants note that should this case proceed to discovery, they may seek a

protective order to require the confidential treatment of documents produced in discovery.

- b. The parties propose a trial date of February 8, 2010.
- c. The parties propose a cutoff date for dispositive motions of September 18, 2009.
- d. The parties do not propose any modification of the Federal rules relating to the number of depositions or interrogatories.
- e. The parties have agreed that electronically-stored information may be produced in paper form.

Dated this 5th day of February, 2009.

Respectfully submitted,

BOARDMAN LAW FIRM
By

/s/ Richard L. Bolton
Richard L. Bolton
Attorneys for Plaintiffs
One South Pinckney Street
Madison, WI 53703
Telephone: 608-257-9521
Facsimile: 608-283-1709
Rbolton@boardmanlawfirm.com

/s/ Thomas C. Bellavia
Thomas C. Bellavia
Assistant Attorney General
Attorneys for Defendant
Governor James Doyle
Wisconsin Department of Justice
Risser Justice Center
17 West Main Street
Madison, WI 53707-7857
Telephone: 608-266-8690
Facsimile: 608-267-2223
Bellaviatc@doj.state.wi.us

ALLIANCE DEFENSE FUND

By

/s/ Joel Oster

Joel Oster
Attorneys for Defendant Shirley Dobson
15192 Rosewood
Leawood, KS 6224
Telephone: 913-685-8000
Facsimile: 913-685-8001
Joster@telladf.org

MICHAEL F. HERTZ
Acting Assistant Attorney General

JAMES GILLIGAN
Assistant Branch Director

/s/ Brad Rosenberg

Brad Rosenberg
(DC Bar 467513)
Trial Attorney
United States Department of Justice
Civil Division, Federal Programs Branch
Tel: (202) 514-3374
Fax: (202) 616-8460
Brad.rosenberg@usdoj.gov

Mailing Address:

Post Office Box 883
Washington, D.C. 20044

Courier Address:

20 Massachusetts Ave., N.W.
Washington, D.C. 20001

COUNSEL FOR DEFENDANTS
PRESIDENT BARACK OBAMA AND
WHITE HOUSE PRESS SECRETARY
ROBERT GIBBS